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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,467	12/27/2001	Richard Alan Barraclough	Gerry01	2184

7590 05/19/2005

Henry L. Smith, Jr.  
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EXAMINER
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PITARO, RYAN F

ART UNIT	PAPER NUMBER
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2174

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,467

Applicant(s)

BARRACLOUGH, RICHARD ALAN

Examiner

Ryan F Pitaro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. Claims 1-21 have been examined.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 13 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 13 and 21 are non-statutory for at least the reason that it is not tangibly embodied in a manner so as to be executable.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Any suitable operating system software means is not defined by the specification and is vague and indefinite.

***Claim Rejections - 35 USC § 103***

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7,9-14,16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiginton, III et al ("Wiginton", US 2002/0087966) in view of Thomas ("Thomas", US 2002/0054096).

As per claim 1, Wiginton teaches a computer program process, called a wizard builder, executable on a computer wherein the setup wizard is constructed by means of asking a human user of the application program simple verbal questions, in English or other language convenient to a human user, and wherein the wizard builder does not require a human user to have any knowledge of writing or using computer programs (paragraph 25). However, Wiginton fails to distinctly point out a process for adapting an application program to function with devices or sensors monitoring or controlling a process occurring in real-time, wherein the wizard builder constructs a setup wizard which sets up a de facto interface between the devices or sensors and the application program, and asking questions about the model and manufacturer of the devices or sensors. Thomas does teach a process for adapting an application program to function with devices or sensors monitoring or controlling a process occurring in real-time ([0023] lines 9-12), wherein the wizard builder constructs a setup wizard which sets up a de facto interface between the devices or sensors and the application program ([0024] lines 1-5), and asking questions about the model and manufacturer of the devices or

sensors ([0032] lines 1-15). Therefore it would have been obvious to an artisan at the time of the invention to combine the process of Wiginton with the teaching of Thomas. Motivation to do so would have been to provide a rapid and cost effective method to enable an integrator to select a small number of important parameters of an electronic device for a custom interface.

As per claim 2, Wiginton- Thomas teaches altering a setup wizard (para. 30, lines 1-2), wherein a human user of the application program can alter and create another setup wizard, which can be run to set up an application program with connection details and properties of other devices or sensors (Thomas, [0020] lines 1-15).

As per claims 3-4, Wiginton-Thomas teaches the computer program process, wherein the setup wizard constructed by the computer program process in the form of a disk file is adapted to be moved to another computer by a human user without any knowledge of writing computer programs (Wiginton, [0038] lines 12-18).

As per claim 5, Wiginton teaches wherein the setup wizard is adapted to be altered by a wizard program which displays original answers to the verbal or other suitable language questions and provides a prompt for a human user to enter new answers about the devices or sensors (Fig.2C).

As per claim 6, Wiginton-Thomas teaches the process further comprising a server program which contains data values for many devices or sensors for monitoring or controlling a process occurring in real-time, and wherein the setup wizard sets up a de facto interface between the application program, and the server program (Thomas, [0024] lines 1-5).

As per claim 7, Wiginton-Thomas teaches a process for creating the setup wizard comprising the steps of: (a) the user's instructing the application program to create a wizard (Wiginton, para.36, lines 4-5), (b) the application software's displaying verbal questions for the user requesting details of connection to, and operating properties of, or both, a first device or sensor, and subsequently, in sequence, of any other devices or sensors having different connection details or operating properties (Wiginton, para.36, lines 18-35), and (c) the application software's storing answers in a setup wizard file which defines the setup wizard (Wiginton, para.36, lines 35-40).

As per claim 9, Wiginton-Thomas teaches a process for running a setup wizard comprising the steps of: (a) the user's asking the application software to run a wizard (Wiginton, para.38, lines 4-7), (b) the application software's reading the setup wizard file (Wiginton, para.38, lines 11-13), (c) the wizard's determining whether the answers to verbal questions are already in the setup wizard file or can be inferred from the answers in the setup wizard file, and (d) if the answer in the preceding step is yes, stopping the process, whereby the application is left in a state of having connection details and properties of the devices or sensors (Thomas, [0025] lines 19-24).

As per claim 10, Wiginton-Thomas teaches a process for running a setup wizard comprising the steps of: (a) the user's asking the application software to run a wizard (Wiginton, para.38, lines 4-7), (b) the application software's reading the setup wizard file (Wiginton, para.38, lines 11-13), (c) the wizard's determining whether the answers to all the verbal questions are already in the setup wizard file or can be inferred from the answers in the setup wizard file, (d) if the answer to the preceding question is no, the

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wizard's asking the user for information that is unique to a new sensor or device, and (e) the application software is incorporating connection details and properties of a new device or sensor (Thomas, [0025] lines 19-24).

As per claim 11, Wiginton-Thomas teaches the wizard builder computer program process to be contained within the application software, and wherein a wizard file is held on a memory means within a computer (Wiginton, para.36, lines 35-40).

As per claim 12, Wiginton-Thomas teaches the computer program process wizard operates without the use of script files (Wiginton, para.25, lines 4-6, code).

As per claim 13, Wiginton-Thomas teaches a computer program process which uses a wizard to create wizards, for use in connection with application programs, and which does not use scripts (Wiginton, para.25, lines 1-8).

As per claim 14, Wiginton-Thomas teaches the setup wizard file to be adapted to be moved to another computer for use with the same or similar application program installed in the other computer (Wiginton, para.38, lines 12-18).

As per claim 16, Wiginton-Thomas teaches the process wherein the computer running the application software comprises a personal computer, containing a communications card and server software that drives and communicates with the communications card, and wherein the personal computer may be running any suitable operating system software means (Wiginton, para. 21, lines 7-20).

As per claim 17, Wiginton-Thomas teaches the wizard file to be adapted to be moved to another computer by a process of using a transfer means selected from the

group consisting of: a floppy disk, serial link, network connection, or email (Wiginton, para.38, lines 12-18).

Claims 18-20 are individually similar in scope to claim 3, and are therefore rejected under similar rationale.

As per claim 21, Wiginton-Thomas teaches a wizard builder computer program implemented as a wizard that does not use scripts to build the wizard (Wiginton, para.25, lines 1-8).

8. Claims 8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiginton, III et al. ("Wiginton", US 2002/0087966) and Thomas ("Thomas" US 2002/0054096) in view of Gauthier et al. ("Gauthier", US 6,502,234).

As per claim 8, Wiginton-Thomas teaches a process for altering the setup wizard (para.30, lines 1-2): However, Wiginton-Thomas does not disclose the steps of (a) the user's instructing the application software to alter the setup wizard, (b) the application software's rerunning the verbal questions asked when the setup wizard file was created, (c) the applications software's setting the default answers to the verbal questions from the contents of the setup wizard file, (d) if the user alters a previous answer, the application software's altering the contents of the file for the setup wizard file, (e) the application software's asking the user by verbal questions for details of connection to, or operating properties of, or both, a first device or sensor, and subsequently, in sequence, any other devices or sensors having different connections details or operating properties and the application software's storing any alternate answers in the setup wizard file. Gauthier teaches a process of altering a wizard to



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create a new wizard comprising of the above mentioned steps (col.19, lines 40-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to include Gauthier's teaching with Wiginton-Thomas's process in order to save time in creating wizards.

As per claim 15, Wiginton-Thomas teaches the setup wizard file to be adapted to be moved to another computer for use with the same or similar application program installed in the other computer (Wiginton, para.38, lines 12-18).

### ***Response to Amendment***

The Affidavit filed on February 16, 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wiginton reference.

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA

1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred.").

After carefully reviewing the affidavit, the evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date, November 29, 2001, of the Wiginton, Pub US 2002/0087966 reference. In this particular instance, there are no factual assertions sufficient to show the claimed subject matter. For instance, Applicant's exhibit lacks the claim limitation of claim 1, which states "...wherein the wizard builder constructs a setup wizard which sets up a defacto interface between the devices or sensors and the application program..."

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

However, the applicant's arguments with respect to Wiginton as a 102(e) reference have been considered and are persuasive. Therefore, Wiginton has been withdrawn as a 102(e) reference for not teaching adapting an application program to function with devices or sensors.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan F Pitaro whose telephone number is 571-272-

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4071. The examiner can normally be reached on 7:00am - 4:30pm Monday -Thursday, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid can be reached on 571-272-4063. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ryan Pitaro  
Art Unit 2174  
Patent Examiner

RFP

*Kristine Kincaid*  
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